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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,695	03/29/2004	Mark James Kline	9595	1368

27752 7590 10/26/2009  
THE PROCTER & GAMBLE COMPANY  
Global Legal Department - IP  
Sycamore Building - 4th Floor  
299 East Sixth Street  
CINCINNATI, OH 45202

EXAMINER
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HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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10/26/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/811,695	<b>Applicant(s)</b> KLINE ET AL.	
	<b>Examiner</b> MELANIE J. HAND	<b>Art Unit</b> 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) 24, 28, 34, 37 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-23, 25-27, 29-33, 35, 36, 39, 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of species 1 in the reply filed on August 14, 2009 is acknowledged.

2. Applicant's election with traverse of subspecies (a) of species (1) in the reply filed on August 14, 2009 is acknowledged. The traversal is on the ground(s) that it would not be a serious burden for the examiner to search an identical configuration for the first and second ears. This is not found persuasive because this is not the grounds for restriction. The subspecies identified are mutually exclusive with respect to one another. The second elastic modulus is either equal to the intermediate modulus or it is not.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 24, 28 and 34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 14, 2009.

4. Claims 37 and 38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 14, 2009.

5. It is noted that this action is final because the amendment to the claims prompted the election requirement and new grounds of rejection made herein.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 21, 22, 25, 26, 29, 31, 32, 35, 36 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Lodge (WO 97/47264 A1).

With respect to **claim 21**: Lodge discloses a front-fastenable disposable wearable absorbent article, diaper 40, comprising the following: a longitudinal axis; and a back waist region 74 that includes: a first side ear on a first side of the longitudinal axis; a second side ear on a second side of the longitudinal axis; and an intermediate stretch region, elongated zone 52, disposed between the side ears and necessarily having an intermediate lateral tensile modulus; wherein the first side ear includes a first fastener and a first side ear stretch region having a first side ear lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus. (Page 21, lines 13-30)

With respect to **claim 22**: The first side ear lateral tensile modulus is greater than the intermediate lateral tensile modulus. Both the first side ear and intermediate region are defined by the backsheet, however the intermediate region 52 has incrementally stretched regions 54 which are more readily elongated as a result of the incremental stretching process and therefore by their nature has a tensile modulus less than the first side ear that does not have such

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incrementally stretched zones or materials, i.e. the first side ear has a tensile modulus greater than the intermediate region tensile modulus.

With respect to **claim 25**: The second side ear lateral tensile modulus disclosed by Lodge is greater than the intermediate lateral tensile modulus. Both the second side ear and intermediate region are defined by the backsheet, however the intermediate region 52 has incrementally stretched regions 54 which are more readily elongated as a result of the incremental stretching process and therefore by their nature has a tensile modulus less than the second side ear that does not have such incrementally stretched zones or materials, i.e. the second side ear has a tensile modulus greater than the intermediate region tensile modulus.

With respect to **claim 26**: Lodge discloses a first side ear lateral tensile modulus and a second side ear lateral tensile modulus that are each greater than the intermediate lateral tensile modulus for reasons stated *supra* with respect to claims 22 and 25.

With respect to **claim 29**: The intermediate stretch region 52 contains a formed substrate 80 that is included in a backsheet of the article inasmuch as it is simply an incrementally stretched portion of backsheet 26. (Page 11, lines 15-19, Page 12, lines 25-29)

With respect to **claim 31**: Lodge discloses a pant-type disposable wearable absorbent article, diaper 40, comprising the following: a longitudinal axis; and a first side panel on a first side of the longitudinal axis; a second side panel on a second side of the longitudinal axis; and an intermediate stretch region, elongated zone 52, disposed in a back waist region 74 of the article between the side panels and necessarily having an intermediate lateral tensile modulus;

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wherein the first side panel includes a first side panel stretch region having a first side panel lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus. Both the first side ear and intermediate region are defined by the backsheet, however the intermediate region 52 has incrementally stretched regions 54 which are more readily elongated as a result of the incremental stretching process and therefore by their nature has a tensile modulus less than the first side ear that does not have such incrementally stretched zones or materials, i.e. the first side ear has a tensile modulus greater than the intermediate region tensile modulus.

With respect to **claim 32**: The first side panel lateral tensile modulus disclosed by Lodge is greater than the intermediate lateral tensile modulus. Both the first side ear and intermediate region are defined by the backsheet, however the intermediate region 52 has incrementally stretched regions 54 which are more readily elongated as a result of the incremental stretching process and therefore by their nature has a tensile modulus less than the first side ear that does not have such incrementally stretched zones or materials, i.e. the first side panel has a tensile modulus greater than the intermediate region tensile modulus.

With respect to **claim 35**: The second side ear lateral tensile modulus disclosed by Lodge is greater than the intermediate lateral tensile modulus. Both the second side ear and intermediate region are defined by the backsheet, however the intermediate region 52 has incrementally stretched regions 54 which are more readily elongated as a result of the incremental stretching process and therefore by their nature has a tensile modulus less than the second side ear that does not have such incrementally stretched zones or materials, i.e. the second side ear has a tensile modulus greater than the intermediate region tensile modulus.

With respect to **claim 36**: Lodge discloses a first side ear lateral tensile modulus and a second side ear lateral tensile modulus that are each greater than the intermediate lateral tensile modulus for reasons stated *supra* with respect to claims 32 and 35.

With respect to **claim 39**: The intermediate stretch region 52 contains a formed substrate 80 that is included in a backsheet of the article inasmuch as it is simply an incrementally stretched portion of backsheet 26. (Page 11, lines 15-19, Page 12, lines 25-29)

8. Claims 21, 29, 30, 31, 39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Buell et al (U.S. Patent No. 5,221,274).

With respect to **claim 21**: Buell discloses a front-fastenable disposable wearable absorbent article 20, comprising: a longitudinal axis; and a back waist region 58 that includes: a first side ear on a first side of the longitudinal axis; a second side ear on a second side of the longitudinal axis; and an intermediate stretch region, namely an elastic waist feature 34, disposed between the side ears and necessarily having an intermediate lateral tensile modulus; wherein the first side ear includes a first fastener and a first side ear stretch region having a first side ear lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus. Examiner's position is based upon Buell's disclosure that the elastic waist feature contains both the backsheet material and an elastomeric material whereas the first side ear contains only the backsheet and topsheet materials. An elastomeric material by its nature has a lower tensile modulus than a non-elastomeric material, thus the first side ear necessarily has a higher tensile modulus than the intermediate region.

With respect to **claim 29**: The intermediate stretch region 34 disclosed by Buell is included in a backsheet of the article inasmuch as it is attached thereto.

With respect to **claim 30**: Buell discloses that an elastomeric element is attached to the backsheet in the intermediate stretch region 34.

With respect to **claim 31**: Buell discloses a front-fastenable disposable wearable absorbent article 20, comprising: a longitudinal axis; a first side panel on a first side of the longitudinal axis; a second side panel on a second side of the longitudinal axis; and an intermediate stretch region, namely an elastic waist feature 34, disposed in a back waist region 58 between the side panels and necessarily having an intermediate lateral tensile modulus; wherein the first side ear includes a first fastener and a first side panel stretch region having a first side panel tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus.

Examiner's position is based upon Buell's disclosure that the elastic waist feature contains both the backsheet material and an elastomeric material whereas the first side ear contains only the backsheet and topsheet materials. An elastomeric material by its nature has a lower tensile modulus than a non-elastomeric material, thus the first side ear necessarily has a higher tensile modulus than the intermediate region.

With respect to **claim 39**: The intermediate stretch region 34 disclosed by Buell is included in a backsheet of the article inasmuch as it is attached thereto.



With respect to **claim 40**: Buell discloses that an elastomeric element is attached to the backsheet in the intermediate stretch region 34.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 23, 27 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lodge (WO 97/47264 A1).

With respect to **claim 23**: Examiner is interpreting "about equal" in a manner consistent with the specification as that term is understood from the specification, i.e. the difference is between greater than 0 and 5% (Specification, page 23, paragraph 3) The first side ear lateral tensile modulus is about equal to the intermediate lateral tensile modulus. Lodge discloses that the intermediate zone is simply the backsheet 26 incrementally stretched in only the intermediate

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region to define a formed substrate 80. Lodge does not explicitly disclose a first side ear tensile modulus about equal to the intermediate region tensile modulus. However it is examiner's position that the incremental stretching process would produce a tensile modulus that is about equal to that of the rest of the backsheet as that term is understood because the process only produces elastic-like behavior by elongating the substrate rather than replacing the material with a genuinely elastic material, thus the difference in tensile moduli between the first side ear and intermediate region would fall in the range used herein when interpreting "about equal".

Therefore it would be obvious to one of ordinary skill in the art to modify the article of Lodge such that the incremental stretching process yields a first side ear tensile modulus that is about equal to the intermediate region tensile modulus with a reasonable expectation of success, which would ensure a more uniform response to stretching during wear.

With respect to **claim 27**: Examiner is interpreting "about equal" in a manner consistent with the specification as that term is understood from the specification, i.e. the difference is between greater than 0 and 5% (Specification, page 23, paragraph 3) The first and second side ear lateral tensile moduli are each about equal to the intermediate lateral tensile modulus. Lodge discloses that the intermediate zone is simply the backsheet 26 incrementally stretched in only the intermediate region to define a formed substrate 80. Lodge does not explicitly disclose a first or second side ear tensile modulus about equal to the intermediate region tensile modulus. However it is examiner's position that the incremental stretching process would produce a tensile modulus that is about equal to that of the rest of the backsheet as that term is understood because the process only produces elastic-like behavior by elongating the substrate rather than replacing the material with a genuinely elastic material. Thus the difference in tensile moduli between the first or second side ear and intermediate region would fall in the range used

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herein when interpreting “about equal”. Therefore, it would be obvious to one of ordinary skill in the art to modify the article of Lodge such that the incremental stretching process yields first and second side ear tensile moduli that are each about equal to the intermediate region tensile modulus with a reasonable expectation of success, which would ensure a more uniform response to stretching during wear.

With respect to **claim 33**: Examiner is interpreting “about equal” in a manner consistent with the specification as that term is understood from the specification, i.e. the difference is between greater than 0 and 5% (Specification, page 23, paragraph 3) The first side panel lateral tensile modulus is about equal to the intermediate lateral tensile modulus. Lodge discloses that the intermediate zone is simply the backsheet 26 incrementally stretched in only the intermediate region to define a formed substrate 80. Lodge does not explicitly disclose a first side ear tensile modulus about equal to the intermediate region tensile modulus. However it is examiner’s position that the incremental stretching process would produce a tensile modulus that is about equal to that of the rest of the backsheet as that term is understood because the process only produces elastic-like behavior by elongating the substrate rather than replacing the material with a genuinely elastic material, thus the difference in tensile moduli between the first side ear and intermediate region would fall in the range used herein when interpreting “about equal”.

Therefore it would be obvious to one of ordinary skill in the art to modify the article of Lodge such that the incremental stretching process yields a first side ear tensile modulus that is about equal to the intermediate region tensile modulus with a reasonable expectation of success, which would ensure a more uniform response to stretching during wear.

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/  
Primary Examiner, Art Unit 3761